*** THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

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+ WRIT PETITION NO. 2695 OF 1998

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% 12.09. 2007

Coromandal Fertilizers Limited, a company incorporated under Companies Act 1956 having its registered office at Coromandal House, 1-2-10, Sarder Patel Road, P.O. Box No. 1589, Secunderabad rep., by its Secretary Mr. S. Kumaraswamy.

….. Petitioner

and

$ The Presiding Officer, Industrial Tribunal-cum-Labour Court, Visakhapatnam and three others.

…..Respondents

! Counsel for the petitioner: Sri C.R. Sridharan

^ Counsel for the second respondent: Sri G. Vidyasagar

< Gist:

>Head Note

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[1] JT (1994)(2) SC 94
2 (2005)2 SCC 489
3 (2007) 2 SCC 433
4 1999(1) SCC 190
5 1999(1) SCC 191
6 2000(3) SCC 324
7 2002 (10) SCC 330
8 (2005) 3 SCC 134
9 (2006) 1 SCC 430
10 (2005)3 SCC 331
11 (1998) 1 LLJ 263 (SC)
12 (2005) 2 SCC 481
13 (2003) 12 SCC 1
14 (2003)6 SCC 675
15 AIR 1964 SC 447

16 (1980) 3 SCC 459

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 2695 OF 1998

ORDER:

M/s Coromandal Fertilizers Limited seek a writ of certiorari to have the award of the Industrial Tribunal-cum-labour Court, Visakhapatnam, in I.D. No. 241 of 1993 dated 18.11.1993, quashed.

The petitioner, a company manufacturing and selling of fertilizers, has its factory at Visakhapatnam wherein around 1100 employees/workmen are employed. The second respondent was employed as a security guard at the factory with effect from 01.02.1983. Alleging misconduct on his part, on three different occasions, three charge-sheets were issued on 24.12.1990, 06.02.1991 and 19.04.1991.

In the first charge-sheet the second respondent is alleged to have entered the plant premises on 20.12.1990 at 12.35 hours under the influence of alcohol, to have shouted in a loud voice and to have created nuisance. The second respondent was charged of misconduct under clauses 23(14), (16) and (23) of the certified standing orders i.e., drunkenness, commission of an act subversive of discipline or good behaviour and for loitering or being on the premises of the company without permission of the supervisor.

In the second charge sheet it was alleged that, on 06.02.1991, the 2nd respondent was deployed as a security guard at the railway siding post in second shift duty ie, from 7.00 am to 3.00 p.m, that at around 0820 hours, during routine security rounds, the duty Assistant Security Officer found him sleeping on a wooden sleeper and that, on being questioned, the second respondent had failed to explain his conduct. The duty Assistant Security Officer is said to have verified the wagon checking report and to have found the same not filled up. The second respondent was charged under clause 23(3)&(16) of gross neglect of work and committing an act subversive of discipline and good behaviour on the premises of the company and in the course of duty.

In the third charge sheet, the second respondent was alleged to have remained absent from duty unauthorisedly, without intimation or prior permission, from 02.04.1991 to 16.04.1991, that at around 2245 hours on 17.04.1991 he had come to the plant gate, used vulgar, filthy and abusive language against the security officer and the management, created nuisance and paralysed the security activities at the plant gate. The petitioner was alleged to have entered the office room of the Assistant Security Officer without his permission and to have taken away the official papers kept on his table inspite of his objection, and, while doing so, to have threatened and shouted at the Assistant Security Officer. The second respondent

was charged under clause 23(8), (14),(15) and (16) of the Certified Standing Orders i.e of absence without permission for a period exceeding ten consecutive days, of disorderly or indecent behaviour on the premises of the Company, of using abusive language, threatening within the premises of the company and of committing acts subversive of discipline or good behaviour on the premises of the company.

The second respondent was called upon to submit his explanation to each of these charge sheets and, since his explanation was not found satisfactory, an independent enquiry officer, a retired Joint Commissioner of Labour, conducted three separate departmental enquiries. The second respondent participated in all the three enquiries and availed the opportunity of defending himself and cross-examined all the witnesses. The enquiry officer held the second respondent guilty of all the charges. Eventually, the second respondent was dismissed from service with immediate effect i.e the close of working hours on 03.06.1993.

Aggrieved thereby, the second respondent approached the Industrial Tribunal-cum-labour Court, Visakhapatnam under Section 2-A(2) of the Industrial Disputes Act challenging the order of punishment of dismissal from service. The Industrial Tribunal, in its order dated 29.03.1996, found no substance or merit in any of the grounds raised by the second respondent in his challenge to the validity of the domestic enquiry and, accordingly, held the domestic enquiry to be valid. The I.D. was then posted for hearing under Section 11-A of the Industrial Disputes Act.

In its award dated 18.11.1997 the Industrial Tribunal framed the following points for its consideration.

1. whether the complaint of the workman, that he was not furnished with the enquiry report before dismissal and that he was not given the opportunity of a second show cause notice, was true and, if so, whether the dismissal order was vitiated?
2. Whether reinstatement of the suspended workman on 13.01.1992, after the conclusion of the enquiry proceedings, is indicative of exoneration of the workman of all the charges spread over the three charge sheets?
3. Whether the delay in conducting the enquiry is fatal to the domestic enquiry and consequently the disciplinary proceedings?
4. Whether the findings of the enquiry officer are unsustainable?
5. Whether there was misjoinder of parties in the three disciplinary proceedings?
6. Whether the punishment imposed is proportionate or commensurate with the charges proved and whether the workman is entitled to any mercy?

On point No.1, the Industrial Tribunal observed that the second respondent-workman was not entitled to have the dismissal order quashed as the enquiry report was supplied to

him at one stage or the other and, more over, he did not show to the Court, by taking appropriate steps at the appropriate level, that non-furnishing of the enquiry report had caused him prejudice. On point No.2, the Industrial Tribunal held that the mere fact that the second respondent was reinstated with back-wages, and his suspension revoked on 13.01.1992 after conclusion of the enquiry proceedings, did not exonerate him of the charge and that it did not deter the management from taking disciplinary proceedings to its logical conclusion. On point No.3, the Industrial Tribunal held that the delay was not inordinate though there was some delay, that in any view of the matter the point had already been decided at the stage of determining the validity of the domestic enquiry and that this question could not be agitated afresh.

On the merits of the findings of the enquiry officer, the Industrial Tribunal noted that the enquiry officer had relied upon the variance in the workman's explanation and his evidence, that the enquiry officer, with regards the 2nd respondent's unauthorised absence from duty, had clearly stated that he had come forward with prevaricating versions even with regards the reasons for his sick leave. While holding that the second charge in the third charge-sheet was grave, the Industrial Tribunal held that the findings of the enquiry officer in this regard was more or less justified by the admission/outburst on the part of the workman in his own evidence and that two responsible officers of the company had given evidence about the circumstances which unmistakably showed that the workman had indulged in some sort of rude behaviour which had contributed to the misconduct, that the workman had tried to justify his misconduct as a consequence of provocation by the Assistant Security Officer, that this kind of rude behaviour could not be justified by any provocation even if it was true, that in this case there was no proof of such provocation and the self-serving testimony of the workman could not be readily accepted.

With regards the first charge sheet, the Industrial Tribunal noted that the enquiry officer, placing reliance on the evidence of the Chief Security Officer and the Assistant Security Officer, the written complaints of M.W-2 and M.W-1 and the medical report marked as Ex.M-1, had held that it was clear from the evidence of M.W-2 that the second respondent-workman had created a scene at 14.45 hours, that he was shouting at the top of his voice using vulgar language, that he was referred to a medical officer and that the medical officer, in his treatment card, had categorically stated that the workman was under

the influence of alcohol. The Industrial Tribunal observed that the state of drunkenness and the rude behavour of the second respondent was established in the enquiry and that there was nothing in these conclusions to show that they were perverse. With regards the second charge sheet, wherein the 2nd respondent was alleged to have been found sleeping while on duty, the Industrial Tribunal observed that the evidence of the management witness was cogent and his testimony remained unshaken in cross-examination. With regards the second respondent-workman's failure to furnish the wagon checking report, the Industrial Tribunal noted that the management had adduced oral evidence through M.W-1 and that there was no ground to characterize the findings of the enquiry officer as either perverse or as not based on legal evidence. The Industrial Tribunal, while holding that there was no material infirmity in the findings and the correctness of the evidence in the enquiry reports, however, observed that the correctness of the findings of the enquiry officer was one thing and the matter of punishment, based on these findings, yet another. On point No.4, the Tribunal held that there was no substance in the argument of the second respondent-workman that the dismissal order was liable to be quashed merely because it was a produce of three enquiries.

On point No.5 i.e., the quantum of punishment, the Industrial Tribunal noted that the management had tried to justify the dismissal order not only from the material available from these three enquiries but also on the past record of the employee and that the appellate order signified their thought process. The Tribunal observed that the past conduct was neither made a charge nor was it referred to in the charge sheet and could not, therefore, form an input in passing the order of dismissal, that it was not unreasonable, therefore, to presume that the dismissal order came to be passed not only on the basis of the present findings but also on the basis of the workman's past record through which he was not taken during the course of enquiry. The Industrial Tribunal held that, in such circumstances, the punishment of dismissal was required to be modified. The Tribunal observed that the charges centered around either misbehaviour or rude behaviour of the workman and not around any grave misconduct like corruption or violating the Official Secrets Act, upon which the management tried to place much reliance perhaps keeping in mind the secrets of manufacturing technology etc., or any other desperate behaviour. The Industrial Tribunal was of the view that the punishment was on the high side, that for the charges proved against the workman a

lesser punishment would have been sufficient, that before the Vice-President of the Company, and even in the written arguments filed before the enquiry officer, the workman had sought mercy, that mercy tempered with justice was part of administration of justice and the discretion exercised in this regard could not be characterized as arbitrary or capricious or as encroaching upon the other's sphere of activity.

The Industrial Tribunal was of the view that the punishment imposed had to be modified, that the workman appeared to be in the prime of his age, that it was rather difficult for him to secure an alternative employment, that the right to livelihood gained importance of late and, in fact, the Supreme Court, in **Narendra Kumar Vs. State of Haryana**[1], had held that the right to livelihood was an integral facet of the right to life and that, under these circumstances, while upholding the findings of the enquiry officer it was in the fitness of things to reduce the severity of the punishment. The Industrial Tribunal noted that the workman had been out of employment since 1993, that they were at the end of the year 1997, that making him forego wages for these years was enough punishment, that the rigor of punishment could be reduced by reinstating him without back wages and continuity of service and that the workman would feel the pinch of his own misconduct while at the same time get a fresh opportunity to mend himself. An Award was passed directing the petitioner to reinstate the second respondent-workman, without back wages or continuity of service, having the effect of converting the gap in service as a break in service for all purposes.

Sri C.R. Sridharan, Learned Counsel for the petitioner, would submit that, having held that the charges were established, the Industrial Tribunal had grossly erred in interfering with the quantum of punishment. Learned Counsel would submit that the charges held proved against the second respondent were of drunken misbehaviour within the factory premises, of using vulgar language, abusing his superiors, sleeping while on duty and of unauthorized absence from duty for which the punishment of dismissal from service was justified. Learned Counsel would submit that while the Industrial Tribunal, in exercise of its discretion under Section 11-A of the Industrial Disputes Act, could interfere with the punishment imposed on an employee, for proved acts of misconduct, such interference could not be as a matter of course or on the ground of misplaced sympathy. Learned Counsel would submit that the Industrial Tribunal had misdirected itself in law in holding that the charges held

established were not as grave as charges of corruption or violation of the Official Secrets Act, that charges of drunken misbehaviour, use of vulgar language, abusing superior officers, sleeping on duty and unauthorised absence from duty are serious acts of misconduct affecting the discipline of the work-force in the establishment and that the Supreme Court, in a catena of judgments, has held that, for similar acts of proved misconduct, the punishment imposed by the employer, of dismissal from service, could not be interfered with by the Industrial Tribunal in exercise of its jurisdiction under Section 11-A of the Industrial Disputes Act. Learned Counsel would place reliance on **Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate**[2], **J.K. Synthetics Ltd. Vs. K.P. Agrawal**[3], **U.P.S.R.T.C. Vs. Pukhraj Singh**[4], **A.P.S.R.T.C. represented by Depot Manager Vs. K. Pochaiah**[5] and **U.P. S.R.T.C. Vs. Subhash Chandra Sharma**[6].

Learned Counsel would further submit that, while the Award of the Industrial Tribunal was required to be quashed, it does not necessitate an order of remand being passed. Learned Counsel would place reliance on the meaning of the word “quash”, as defined in several dictionaries, to contend that in certiorari proceedings this Court should merely quash the order and not remand the matter to the Industrial Tribunal-cum-labour Court for fresh consideration on the quantum of punishment. Learned Counsel would submit that, since the law laid down by the Supreme Court is binding on the Industrial Tribunal/Labour Court, and as it is evident from the charges held established that the only punishment which can be imposed is that of the dismissal from service, no useful purpose would be served in remanding the matter to the Industrial Tribunal for its consideration afresh, under Section 11-A of the Industrial Disputes Act, on the quantum of punishment.

Sri G. Vidyasagar, learned Counsel for the second respondent, on the other hand, would submit that this Court in Certiorari proceedings would not sit in appeal over the discretion exercised, by the Labour Court/Industrial Tribunal under Section 11-A of the Industrial Disputes Act, on the quantum of punishment. Learned Counsel would submit that the Industrial Tribunal had held that the employer was swayed by the previous misconduct of the second respondent-workman and had rightly observed that, since he was not informed that the previous punishments imposed on him would also to be taken into consideration, his previous conduct could not have any bearing on the punishment to be imposed for the

charges held established in these three departmental enquiries. Learned Counsel would submit that as the punishment, substituted by the Industrial Tribunal for the one imposed by the employer, cannot be said to be arbitrary, no interference was called for, that, while the three charge sheets were issued to the workman in December, 1990, February, 1991 and April, 1992, the workman had submitted his reply immediately thereafter, that an enquiry officer was appointed to conduct the enquiry in May, 1991, that the enquiry with regards the first two charge sheets commenced only in 1992 and the third charge sheet on 30.10.1991, the enquiry officer had submitted his report on the first charge sheet on 29.04.1992, the second charge sheet on 03.06.1992 and the third charge sheet on 04.02.1992 and that the second respondent-workman, who was suspended pending enquiry, was allowed to join duty with effect from 13.01.1992 and paid full wages and allowances for the entire period of suspension including bonus treating the period as if he was on duty. According to the learned Counsel, in view of the inordinate delay of more than one and half years without any justifiable cause, as the enquiry was itself held eight months after the enquiry officer was appointed, as the second respondent has already been made to undergo the ordeal of being placed under suspension and a departmental enquiry being held against him after inordinate delay and, as the Industrial Tribunal had rightly held that he could not secure any alternative employment, this Court should not exercise its discretion under Article 226 of the Constitution of India and refrain from interfering with the Award of the Industrial Tribunal-cum-Labour Court.

QUANTUM OF PUNISHMENT: SCOPE OF INTERFERENCE UNDER SECTION 11-A OF THE INDUSTRIAL DISPUTES ACT:

The Industrial Tribunal/Labour Court has been conferred jurisdiction, under Section 11-A of the Industrial Disputes Act, to re-appreciate the evidence on record and to examine the nature and extent of punishment to be imposed for proved acts of misconduct. Even in cases where the charges levelled against the delinquent employee are held established the Industrial Tribunal/Labour Court has the power, in appropriate cases, to interfere and substitute the punishment imposed by the employer with another. The discretion which the Industrial Tribunal/Labour Court has in this regard is not unfettered but is circumscribed and can only be exercised within well defined limits.

In the present case, having held that the charges levelled against the second respondent-workman, in the three charge sheets issued against him, were established the Industrial Tribunal has chosen to interfere with the punishment imposed. As the Award, to the extent the Industrial Tribunal, concurred with the findings of the enquiry officer in holding the second respondent guilty of all the charges in the three charge memos, is not under challenge before this Court, the only question which necessitates examination is whether the Industrial Tribunal, for the charges held established against the second respondent-workman, was justified in substituting the punishment imposed by the petitioner of dismissal from service with that of reinstatement without back wages or continuity of service.

The quantum of punishment to be imposed on an employee for proved misconduct is, ordinarily, for the employer, in its wisdom, to decide. After introduction of Section 11-A, in the Industrial Disputes Act, discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management even where the concerned workman is found guilty of misconduct. The area of discretion is well defined, is not unlimited and has to be used judiciously (**Regional Manager, UPSRTC Vs. Ghanshyam Sharma**[7]). The discretion under Section 11-A is available only on the existence of certain factors like the punishment being grossly disproportionate to the gravity of misconduct so as to disturb the conscience of the court, the existence of mitigating circumstances which require reduction of the sentence or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factors the Labour Court cannot, by way of sympathy alone, exercise the power under Section 11-A of the Act to reduce the punishment. (**Mahindra and Mahindra Ltd. Vs. N.B. Narawade**[8]). The jurisdiction to interfere with the quantum of punishment can be exercised only when it is found that no reasonable person could inflict such a punishment and when relevant factors are not taken into consideration by the management which would have a direct bearing on the quantum of punishment. (**Hombe Gowda Educational Trust Vs. State of Karnataka**[9]). If the Tribunal decides to interfere with the punishment it should bear in mind the principle of proportionality between the gravity of the offence and the stringency of the punishment. (**Muriadiah Colliery of Bharat Cooking Coal Ltd. Vs. Bihar Colliery Kamgar Union**

through workmen[10]). In the absence of a finding that the punishment imposed is shockingly disproportionate to the gravity of the charge established, the Labour Court should not interfere with the punishment. (**J.K. Synthetics Ltd**[3]). If the punishment is harsh, albeit a lesser punishment may be imposed, but such an order cannot be passed on irrational or extraneous factors and certainly not on compassionate grounds. (**Bharat Forge Co. Ltd.**[2]). The jurisdiction to interfere with the punishment must not be exercised capriciously and arbitrarily. **(Subhash Chandra Sharma**[6]; **Christian Medical College Hospital Employees' Union Vs. Christian Medical College Vellore Association**[11]). The power of the Labour Court, under Section 11-A, is not without limitation. The question the Labour Court ought to ask itself, while exercising discretion under Section 11-A, is whether there are sufficient reasons for it to come to a reasonable conclusion that the punishment imposed is grossly disproportionate. (**Bharat Heavy Electricals Ltd. Vs. M. Chandrasekhar Reddy**[12]).

Only in a case where the satisfaction is reached by the Labour Court, that there are sufficient reasons to do so, would interference with the order of punishment be justified. (**Engg. Laghu Udyog Employees' Union Vs. Judge, Labour Court and Industrial Tribunal**[13]). On finding the punishment imposed to be grossly or shockingly disproportionate the Labour Court has the power, under Section 11-A, to reduce its severity. Once it holds that the punishment is justified it does not have jurisdiction to direct the employer to re-employ the delinquent employee, either on compassionate grounds or otherwise. (**Pukhraj Singh**[4]; **K. Pochiah**[5]).

While proved misconduct of corruption, revealing secrets of manufacturing technology etc may well justify imposition of the deterrent punishment of dismissal from service, it cannot be said that in all other cases the employee is entitled for lenience whatever be the nature of the charges held proved. Misplaced sympathy and undue indulgence, for proved misconduct of gross indiscipline at the workplace, is beyond the discretionary jurisdiction of the Industrial Tribunal/Labour Court under Section 11-A of the Industrial Disputes Act. The charges held established against the second respondent are of sleeping at the work place while on duty, drunkenness, acts subversive of discipline and good behaviour, gross neglect

of work, absence without permission for a period exceeding ten days, disorderly or indecent behaviour on the premises of the Company, and using abusive language and threatening superior officers. These charges, held established against the second respondent, are grave and serious acts of misconduct. The mere fact that they do not relate to charges of corruption or of revealing secrets of manufacturing technology does not justify misplaced sympathy being shown on the premise that the employee's right to livelihood under Article 21 of the Constitution is affected and he, in the prime of his age, would find it difficult to get alternative employment. Gross indiscipline at the workplace must be dealt with sternly. The Industrial Tribunal in substituting the punishment, of dismissal from service with that of reinstatement without back wages and continuity of service, has committed an error of law apparent on the face of the record which necessitates the Award being quashed in Certiorari proceedings under Article 226 of the Constitution of India.

WRIT OF CERTIORARI – ITS SCOPE:

Now the contention of Sri C.R. Sridharan, learned Counsel for the petitioner, that once substitution of punishment by the Industrial Tribunal is held to be an error of law apparent on the face of the record, this Court should merely quash the Award and not remand the matter to the Industrial Tribunal for its consideration afresh under Section 11-A of the Industrial Disputes Act. While quashing of the Award of the Industrial Tribunal would result in restoration of the situation which, hitherto, existed and in revival of the punishment, imposed on the second respondent workman of dismissal from service, the question which arises for consideration is whether this Court should merely quash the Award or, while doing so, remand the matter to the Industrial Tribunal for exercise of its jurisdiction, under Section 11-A of the Industrial Disputes Act, afresh to the limited extent of examining the nature and extent of punishment to be imposed for proved acts of misconduct.

"Certiorari is used to bring up into the High Court the decision of some inferior tribunal or authority in order that it may be investigated. If the decision does not pass the test, it is quashed — that is to say, it is declared completely invalid, so that no one need respect it. The underlying policy is that all inferior courts and authorities have only limited jurisdiction or powers and must be kept within their legal bounds."

(**Administrative Law, H.W.R. Wade and C.F. Forsyth 8th Edn**.)

It is no doubt true that in **Bharat Forge Comp. Ltd**[2] for the misconduct held established of sleeping at the work place while on duty, in **J.K. Synthetics Ltd**[3] for insubordination and disorderly behaviour, in **K. Pochaiah**[5] for indiscipline, in **N.B. Narawade**[8] for abuse and use of filthy language against his superior officers, in **Subhash Chandra Sharma**[6] for abuse and assault and in **Hombe Gowda Educational Trust**[9] and **Subhash Chander Sharma**[6] for physical assault against the superior officer, the Supreme Court held that the punishment of dismissal from service was not disproportionate. Should this Court, in Certiorari proceedings, merely quash the Award and not remand the matter to the Industrial Tribunal for its consideration afresh under Section 11-A of the Industrial Disputes Act? Would such a course of action not result in this Court upholding the punishment of dismissal from service imposed by the petitioner on the second respondent workman?

While the law laid down by the Supreme Court is binding, under Article 141 of the Constitution of India, on all Courts in the Country, including the High Courts and Industrial Tribunals, this Court, in exercise of its certiorari jurisdiction under Article 226 of the Constitution, may not be justified in substituting the punishment imposed by the Industrial Tribunal with another or to uphold the order of punishment imposed by the employer which, in effect, would amount to this Court sitting in appeal over the discretion exercised by the Industrial Tribunal under Section 11-A of the Industrial Disputes Act. The jurisdiction to examine the nature and extent of punishment to be imposed for proved misconduct and, in appropriate cases, to substitute the punishment imposed with another, is specifically conferred by Parliament on Industrial Tribunals/Labour Courts under Section 11-A of the Industrial Disputes Act. This Court, under Article 226 of the Constitution, would, ordinarily, not take upon itself the task of exercising the powers conferred on Industrial Tribunals/Labour Courts under Section 11-A of the Industrial Disputes Act. The Certiorari jurisdiction, under Article 226 of the Constitution of India, is to be exercised for correcting gross errors of jurisdiction and thereby ensure that inferior Courts/Tribunals with limited jurisdiction exercise powers within their legal bounds of authority. Ordinarily, the High Court, in exercise of its Certiorari jurisdiction, would not act as an appellate Court to sit in appeal over the discretion exercised by the Industrial Tribunal/Labour Court under Section 11-A of

the Industrial Disputes Act and substitute the punishment imposed by them with another. In ensuring that Industrial Tribunals/Labour Courts exercise jurisdiction within their legal bounds of authority, this Court, except on those rare occasions when interference may be justified to pull down the curtain and give a quietus to a long drawn litigation would not, ordinarily, exceed its self-imposed jurisdictional limits, to take upon itself the task of determining the appropriate punishment to be imposed for the misconduct held established.

As the natural consequence, of quashing the Award, would be revival of the earlier order of dismissal, if this Court were merely to quash the Award without remanding the matter back to the Industrial Tribunal it would, in effect, have substituted the punishment imposed by the Industrial Tribunal/Labour Court with another and put its seal of approval on the order of punishment of dismissal from service imposed by the employer.

Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction ie. when a Subordinate Court/Tribunal is found to have acted (*i*) without jurisdiction — by assuming jurisdiction where there exists none, or (*ii*) in excess of its jurisdiction — by overstepping or crossing the limits of jurisdiction, or (*iii*) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice. (**Surya Dev Rai Vs. Ram Chander Rai**[14]).

The jurisdiction to issue a writ of Certiorari is supervisory and the Court exercising it is not entitled to act as an appellate Court. Findings of fact reached by the Labour Court or Industrial Tribunal, as a result of appreciation of evidence, cannot be reopened or questioned in Certiorari proceedings. An error of law apparent on the face of the record can be corrected but not an error of fact, however grave it may appear to be.

On findings of fact, a writ of Certiorari can be issued if it is shown that, in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of Certiorari. A finding of fact recorded by the Tribunal cannot be challenged in Certiorari proceedings on the ground that

the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said finding, are within the exclusive jurisdiction of the Industrial Tribunal, and the said points cannot be agitated before a Writ Court.

What can be corrected by a writ of Certiorari must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it or in disregard of it or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a Writ of Certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that, in some cases, the impugned error of law may not be obvious or patent on the face of the record and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of Certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not always be open to correction by a Writ of Certiorari. It is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law, and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a Writ of Certiorari can be legitimately exercised. (**Syed Yakoob Vs. K.S. Radhakrishnan**[15]).

In **Managing Director, U.P. Warehousing Corpn. Vs. Vijay Narayan Vajpayee**[16], the Allahabad High Court, in the exercise of its Certiorari jurisdiction under Article 226 of the

Constitution, while quashing the order of dismissal from service, further directed that the employee be reinstated in service *with full back wages.* While holding that, in giving this further direction, the High Court had overleaped the bounds of its jurisdiction, the Supreme Court observed:-

"…….It must be remembered that in the exercise of its certiorari jurisdiction under Article 226 of the Constitution, the High Court acts only in a supervisory capacity and not as an Appellate Tribunal. It does not review the evidence upon which the inferior tribunal proposed to base its conclusion; it simply demolishes the order which it considers to be without jurisdiction or manifestly erroneous, but does not, as a rule, substitute its own view for those of the inferior tribunal. In other words, the offending order of the impugned illegal proceeding is quashed and put out of the way as one which should not be used to the detriment of the writ petitioner. **Thus, in matters of employment, while exercising its supervisory jurisdiction under Article 226 of the Constitution, over the orders and quasi-judicial proceeding of an administrative authority — not being a proceeding under the Industrial/Labour Law before an Industrial/Labour Tribunal — culminating in dismissal of the employee, the High Court should *ordinarily* , in the event of the dismissal being found illegal, simply quash the same and should not further give a positive direction for payment to the employee full back wages (although as a consequence of the annulment of the dismissal, the position as it obtained immediately before the dismissal is restored); such peculiar powers can properly be exercised in a case where the impugned adjudication or award has been given by an Industrial Tribunal or Labour Court……."**

The caution administered by the Supreme Court, in **Vijay Narayan Vajpayee**[16], is for High Courts to refrain from issuing further directions in substitution of the punishment imposed by the employer with another. In remanding the matter back to the Industrial Tribunal, directing it to exercise its jurisdiction under Section 11-A of the Industrial Disputes Act afresh, this Court has not issued further directions on the nature and extent of punishment to be imposed for proved acts of misconduct. Even otherwise the Supreme Court, in **Vijay Narayan Vajpayee**[16], has made an exception in cases of proceedings under the Industrial/Labour Law before an Industrial Tribunal/Labour Court.

All that this Court, while remanding the matter, is asking the Industrial Tribunal to do is to exercise its jurisdiction under Section 11-A of the Industrial Disputes Act bearing in mind the error of law committed by it earlier. Accepting the contention of Sri C.R. Sridharan that this Court, when it finds an error of law apparent on the face of the record, should merely quash the Award, and refrain from remanding the matter, may well result in grave and serious consequences. It is well settled that an order of punishment passed by an employer, in violation of principles of natural justice, would also be required to be quashed. If, while quashing the order, the employer is not given liberty, to comply with principles of natural justice and, thereafter, pass an order afresh in accordance with law, it may well result in a

situation where an employee, found guilty of gross misconduct of corruption, is let off merely because some procedural infirmity had necessitated the impugned order of punishment being quashed. That is not, and cannot be, the scope of Certiorari jurisdiction under Article 226 of the Constitution of India.

I consider it appropriate, therefore, to quash the Award and remand the matter back to the Industrial Tribunal-cum-Labour Court for its consideration afresh, under Section 11-A of the Industrial Disputes Act, only on the question of the nature and extent of punishment to be imposed on the second respondent-workman for the charges held established against him. The law laid down by the Supreme Court, in the judgments referred to hereinabove, shall be borne in mind while deciding the appropriate punishment to be imposed for the proved acts of misconduct. The Industrial Tribunal-cum-Labour Court shall afford an opportunity of being heard to both the parties, exercise its jurisdiction under Section 11-A of the Industrial Disputes Act and pass an Award as expeditiously as possible, in any event not later than four months from the date of receipt of a copy of this order. Since the second respondent is being paid last drawn wages, under Section 17-B of the Industrial Disputes Act, for the past nearly a decade during the pendency of writ proceedings before this Court, it is just and necessary that such payment be continued till the matter is heard and decided afresh and an Award is passed by the Industrial Tribunal in accordance with law.

The Writ Petition is allowed. However, in the circumstances, without costs.

Date: .09.2007 RAMESH RANGANATHAN, J

Note: L.R. copy to be marked
B/o
MRKR/ASP

[1] JT (1994)(2) SC 94
[2] (2005)2 SCC 489
[3] (2007) 2 SCC 433
[4] 1999(1) SCC 190
[5] 1999(1) SCC 191
[6] 2000(3) SCC 324
[7] 2002 (10) SCC 330
[8] (2005) 3 SCC 134
[9] (2006) 1 SCC 430
[10] (2005)3 SCC 331
[11] (1998) 1 LLJ 263 (SC)
[12] (2005) 2 SCC 481
[13] (2003) 12 SCC 1
[14] (2003)6 SCC 675
[15] AIR 1964 SC 447
[16] (1980) 3 SCC 459